

AGREEMENT BETWEEN THE CITY OF BOSTON AND
BRIDGEVIEW APARTMENTS LIMITED PARTNERSHIP
PURSUANT TO CHAPTER 121A, SECTION 6A OF
THE MASSACHUSETTS GENERAL LAWS

This AGREEMENT (the "**Agreement**") is made as of this 16th day of January ~~December~~ 2015 (the "**Effective Date**"), by and between **BRIDGEVIEW APARTMENTS LIMITED PARTNERSHIP**, a Massachusetts limited partnership organized under General Laws Chapter 109 and subject to General Laws Chapter 121A ("**Chapter 121A**") and the Acts of 1960, Chapter 652 ("**Chapter 652**"), both as amended to date (the "**Partnership**"), and the **CITY OF BOSTON**, a municipal corporation of the Commonwealth of Massachusetts (the "**City**") acting pursuant to General Laws Chapter 121A, Sections 6A and 10 and every other power and authority.

WITNESSETH THAT:

WHEREAS, the Partnership filed an application dated December 1, 2010 (the "**Application**") with the Boston Redevelopment Authority (the "**Authority**") under the provisions of Chapter 121A and Chapter 652 for approval of a project involving the acquisition from the Authority of a parcel of vacant land located in the Charlestown District of the City of Boston, Suffolk County, Massachusetts and the construction thereon of a low income housing project known as Bridgeview Apartments (the "**Project**"); and

WHEREAS, the Partnership intends to construct a new building and develop 61 affordable rental units, 64 parking spaces, a 5-bed group home for persons with developmental disabilities (the "**Group Home**"), and approximately 6,200 square feet of commercial space to be leased to the non-profit sponsor of the Project, Toward Independent Living and Learning, Inc. (the "**Commercial Space**"); and

WHEREAS, the Authority approved the Application by a vote on January 13, 2011, adopting a Report and Decision; and

WHEREAS, the Mayor of the City (the "**Mayor**") approved the above votes of the Authority on January 18, 2011; and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the Report and Decision were filed with the City Clerk of the City of Boston (the "**City Clerk**") on January 19, 2011 (the "**Approval Date**"), and such approval became final and binding pursuant to the provisions of Chapters 121A and 652; and

WHEREAS, the Partnership filed an application with the Authority dated July 1, 2014 (the "**Additional Application**") under the provisions of Chapter 121A and Chapter 652 for approval of the financing for the Project; and

WHEREAS, the Authority approved the Additional Application by a vote on July 10, 2014, adopting a First Amendment to Report and Decision (as so amended, the "**Report and Decision**"); and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the

First Amendment to Report and Decision were filed with the City Clerk on July 15, 2014, and such approval became final and binding pursuant to the provisions of Chapters 121A and 652; and

WHEREAS, in accordance with the Report and Decision, the Partnership has entered into a Regulatory Agreement with the Authority, of even date, with respect to the development of the Project (the "**Regulatory Agreement**"); and

WHEREAS, the Partnership and the City desire to enter into this Agreement pursuant to Sections 6A and 10 of Chapter 121A for payments in-lieu-of taxes with respect to the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Operation of the Project.** The Partnership shall carry out the Project in accordance with, and subject to, the provisions of Chapters 121A and 652, the provisions of the Report and Decision, and the provisions of the Regulatory Agreement with the Authority, as amended from time to time.
2. **Location.** The Project is located at 330 New Rutherford Avenue in Charlestown. The parcel that will be the subject of this Agreement is identified as being in Ward 2, and having Parcel number 02164100.
3. **Term.** This Agreement shall remain in effect for a period of eighteen (18) years after the Effective Date.
4. **Excise Tax Payments.** The Partnership shall pay to the Commonwealth of Massachusetts, its Department of Revenue or any successor department or agency ("**DOR**"), with respect to each calendar year, or any portion thereof, that this Agreement is in effect and applicable, the Urban Redevelopment Excise Tax required under Chapter 121A, Section 10, as amended from time to time (the "**Excise Tax**").
5. **6A Contract Payments.**

- a. *Amount:* Beginning with the Calendar Year in which the Effective Date occurs or a portion thereof, and for each calendar year, or portion thereof, thereafter, the Partnership shall pay to the City an amount (the "**Contract Amount**") equal to the sum of eight percent (8%) of the "**Gross Residential Income**" and twenty percent (20%) of the "**Gross Commercial Income**" received by the Partnership from tenants of the Project for that calendar year less amounts actually paid under section 10 of chapter 121A to DOR for that same calendar year.

The phrase "**Gross Residential Income**" shall be deemed to mean the aggregate of the gross rentals received by the Partnership in connection with the 61 residential units at the Project and that portion of the parking spaces at the Project reserved exclusively for the residential units, from whatever source derived, including but not limited to the residential tenants of the Project and all income received by the Partnership pursuant to a Housing Assistance Payments Contract with the United States Department of Housing and Urban Development, pursuant to Section 8 of the United States Housing Act of 1937,

as amended, or any similar successor subsidy program or equivalent state program.

“Gross Commercial Income” shall mean the aggregate of the gross rentals received by the Partnership for the approximately 2,500 square feet comprising the Group Home, the approximately 6,200 square feet comprising the Commercial Space, and any parking space at the Project not specifically reserved for the exclusive use of the residential units.

If either the Group Home consisting of approximately 2,500 square feet or the Commercial Space are operated and occupied by Toward Independent Living and Learning, Inc. (**“TILL”**), a federally recognized 501(c)(3) nonprofit organization, then the income for that respective space will not be included as Gross Commercial Income for purposes of calculating the Contract Amount. As of the date of this Agreement it is anticipated that the Group Home will be operated and occupied by TILL, and as such the Gross Commercial Income portion of the Contract Amount attributable to the Group Home is anticipated to equal \$0. As of the date of this Agreement it is anticipated that the Commercial Space will be master leased to TILL and occupied in part by TILL and in part by Bay Cove Human Services, Inc. (**“Bay Cove”**) pursuant to a sublease agreement with TILL, with Bay Cove having been approved in advance by the Commissioner of Assessing pursuant to the terms below, and as such the Gross Commercial Income portion of the Contract Amount attributable to the Commercial Space is anticipated to equal \$0.

If the Group Home and/or the Commercial Space are operated and occupied by a different federally recognized 501(c)(3) nonprofit organization and that occupancy is approved by the Commissioner of Assessing for the City of Boston (**“Commissioner of Assessing”**) pursuant to the terms below, then the income for that respective space will also be excluded from Gross Commercial Income for the purposes of calculating the Contract Amount.

Annually, pursuant to the same schedule outlined in Section 8 below for the delivery of Financial Statements, the Partnership shall file with the Commissioner of Assessing a copy of all leases or occupancy agreements for the Group Home and Commercial Space (other than individual tenants of the Group Home) and for any occupant of the Group Home and Commercial Space (other than individual tenants of the Group Home) a copy of the articles of organization and a copy of the federal 501(c)(3) determination letter for that occupant. If upon receipt of this documentation it is clear that the occupant(s) of the Group Home and Commercial Space exist for the same purpose, and are using the Group Home and Commercial Space in the same manner as TILL, then they will be deemed an equivalent occupant, their occupancy will be approved and the income for said space will be excluded as Gross Commercial Income for the purposes of calculating the Contract Amount. The determination as to any occupant's qualification shall be made solely by the Commissioner of Assessing on an annual basis and shall be final. The Commissioner of Assessing hereby approves Bay Cove, as a subtenant of the Commercial Space, to the effect that the income for said space will be

excluded from Gross Commercial Income for the purposes of calculating the Contract Amount.

The above formula for determining the Contract Amount is expressly contingent on the 61 residential units of the Project being used exclusively for affordable residential rental housing and associated common areas and amenities, and the Partnership acknowledges that any change in use which would involve any uses other than the foregoing would require approval by the Authority and an amended 6A contract acceptable to the Commissioner of Assessing.

- b. *Due Date:* The Partnership shall pay to the City the Contract Amount on or before April 1 following the end of each calendar year for which such payment is due.
- c. *Partial Payments:* The Contract Amount shall be equitably prorated for any partial year during the term set forth in Section 2.
- d. *Late Payments:* A late Contract Amount and/or late Gap Payments, or any portion thereof, shall bear interest at the rate allowed for in G.L. c. 60, as amended from time to time.

6. **Gap Payments.** Upon the termination of this Agreement, the Partnership shall pay or cause to be paid a gap payment to cover the time period between the termination date and the date the Project becomes taxable pursuant to General Laws, Chapter 59. The gap payment shall be equal to the Contract Amount that would have been made for such period if the Project had remained subject to this Agreement. The gap payment for the balance of the calendar year during which this Agreement terminates shall be payable on or before April 1 of the year following the year in which this Agreement terminates. Such amount for the first six (6) months of the year following the year in which this Agreement terminates shall be payable on or before June 30 of the year following the year in which this Agreement terminates. The Project thereafter shall not be subject to the obligations of Chapter 121A, enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations of this Agreement; provided, however, the deviations and permissions granted by the Authority pursuant to the Report and Decision shall survive such termination and shall remain in effect.

7. **Overpayments.** Any Overpayment (as defined below) applicable to a calendar year, or portion thereof, shall at the election of the City, be either refunded or applied to reduce the payments due in succeeding calendar years, except with respect to the last calendar year, or portion thereof, in which the Project shall be subject to this Agreement, any Overpayment by the Partnership shall be refunded by the City. For purposes of this Agreement, an "**Overpayment**" shall include the following, to the extent that they exceed collectively the Contract Amount: (i) any amounts paid by the Partnership to the City as real estate taxes pursuant to Chapter 59; (ii) any amounts paid by the Partnership under Chapter 121A, Section 15; and (iii) any amounts paid by the Partnership to the Commonwealth of Massachusetts, or any political subdivisions thereof, under any general or special law, as an excise or tax measured by its income from or investment in the Project, not including the excise prescribed by Chapter 121A, Section 10. If the Overpayment is due to the Partnership's failure to provide the financial information required by this Agreement or to the Partnership's intentional provision of misleading financial information then no refund will be issued and the Overpayment will not be applied to reduce payments due in

succeeding calendar years.

8. **Delivery and Examination of Financial Statements.**

- a. The Partnership shall file with the Commissioner of Assessing by February 10 following the end of each calendar year during which this Agreement is in effect: (a) a statement of income and expenses for the Project during the preceding calendar year, or portion thereof, and (b) a Declaration of Liability Return Valuation, a form made available by the Assessing Department.
- b. The Partnership shall file with the Commissioner of Assessing, and the Collector-Treasurer of the City ("**Collector-Treasurer**") by April 1 following the end of each calendar year during which this Agreement is in effect the following: (a) a Declaration of Liability Form, a form made available by the Collector-Treasurer; (b) an audited report, prepared by a Certified Public Accountant, consisting of a statement of all rental and other income, operating costs, a statement of profit and loss, a balance sheet, and a statement of disposition of funds for the preceding year; and (c) a certified copy of the Partnership's Excise Tax Return as submitted to DOR.
- c. The Partnership hereby authorizes the Commissioner of Assessing, or a representative of the Commissioner designated in writing, to examine from time to time all urban redevelopment excise tax returns and attachments thereto filed by the Partnership with the DOR. No further evidence of this authorization shall be required. In addition, the Partnership shall provide to the Commissioner of Assessing a copy of any filing made to the DOR within 30 days of such filing. For all payments made to the DOR, the Partnership will provide a detailed breakdown indicating what portions of the payment, if any, were for penalties or interest, including the ward and parcel number to which those payments were applied.

9. **Determination of Fair Cash Value.** The Assessing Department hereby determines, in accordance with the seventh paragraph of Section 10 of Chapter 121A, that the fair cash value of the real and personal property constituting the Project, as of each January 1 following the Effective Date through and including January 1 of the year next following the year in which the Partnership's property tax exemption under Chapter 121A shall expire or terminate, shall be an amount which, when used in the computation of the Excise Tax for or with respect to the previous calendar year, would result in an Excise Tax not greater than the Contract Amount due for such prior calendar year. The City agrees to certify as to each of the foregoing fair cash value dates and amounts to DOR and the Partnership on or before March 1 of each year during such periods, pursuant to the second paragraph of Section 10 of Chapter 121A. Notwithstanding the foregoing, if the Partnership does not file with the Commissioner the required financial information as set forth in Section 8 above, the Assessing Department, at the sole discretion of the Commissioner, may determine "fair cash value" without regard to the limitations described herein.

10. **Conditions.** The obligations of the Partnership under this Agreement are conditional in all respects upon the issuance to it of all permissions, approvals, favorable reviews, permits and licenses which may be required by City, State, Federal or other authorities with respect to the construction of the Project, whether or not the same were specified in the

Application.

11. **Amendments to Chapter 121A or Rules and Regulations.** The Partnership and the City agree that any amendment, subsequent to the execution of this Agreement, of Chapter 121A, except for Section 10, and Chapter 652 and the rules, regulations and standards prescribed by the Authority, which otherwise might be applicable to the Project, shall not affect the same.

12. **Notices.** All notices required pursuant to this Agreement shall be in writing and delivered by hand delivery or mailed postage prepaid, by registered or certified mail, addressed as follows:

Partnership: Bridgeview Apartments Limited Partnership
 c/o Toward Independent Living and Learning, Inc.
 20 Eastbrook Road, Suite 201
 Dedham, MA 02026
 Attn: President

With copies to: Bridgeview Partners LLC
 c/o James L. Gribaudo
 16 Rustlewood Road
 West Roxbury, MA 02132

 Joseph S. Lieber, Esq.
 Klein Hornig LLP
 101 Arch Street
 Boston, MA 02110

 Joel Feinberg, Esq.
 Bartlett Hackett Feinberg P.C.
 155 Federal Street
 Boston, MA 02110

City: City of Boston Assessing Department
 One City Hall Square, Room 301
 Boston, MA 02201
 Attn: Commissioner of Assessing

A different address may be designated by each party by giving written notice to the other party. Any such notice shall be deemed given when so delivered by hand or, if so mailed, two (2) days after such notice is deposited with the U.S. Postal Service.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

14. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. **Governing Law.** Notwithstanding anything to the contrary, this Agreement shall be governed by the laws of the Commonwealth of Massachusetts and any suit, claim or action shall be brought in Suffolk County.

16. **Invalidity.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

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Executed as of the day and year first above written.

BRIDGEVIEW APARTMENTS LIMITED PARTNERSHIP

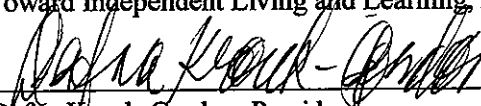
By: Bridgeview Apartments GP LLC, its general partner

By: Bridgeview Partners LLC, its managing member

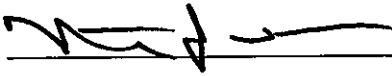
By: Gilchrest Associates, Inc., its 49% member

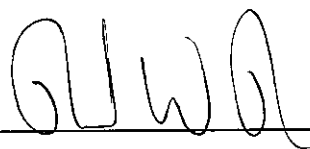
By: 
Byron C. Gilchrest, President

By: Toward Independent Living and Learning, Inc., its 51% member

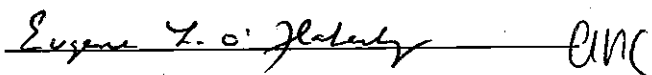
By: 
Dafna Krouk-Gordon, President

CITY OF BOSTON

By: 
Martin J. Walsh, Mayor

By: 
Ronald W. Rakow, Commissioner of Assessing

APPROVED AS TO FORM:

By:  EINC
Eugene L. O'Flaherty, Corporation Counsel
City of Boston